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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1976

NO. 76-743

**WILLIAM FRANKLIN CHEW, III**

*Petitioner,*

v.

**UNITED STATES OF AMERICA,**

*Respondent.*

**PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT**

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**WILLIAM FRANKLIN CHEW, III**

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**PETITION FOR WRIT OF CERTIORARI  
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Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above entitled case on September 13, 1976; Petition for Rehearing denied on October 5, 1976.

### OPINIONS BELOW

On October 13, 1972, the United States issued a "violation notice" number 20128 charging Petitioner with "Exceeding the Daily Bag Limit on Doves", Title 16 USC §703-711, 50 CFR, §10.24 and with "Wanton Waste of Migratory Birds", Title 16 USC, §703-711, 50 CFR, §10.25 which allegedly occurred on September 9, 1972 on a farm at Baltimore, Maryland.

The matter came on for trial on March 6, 1973 before United States Magistrate Daniel E. Klein, Jr. in the United States District Court for the District of Maryland. Prior to trial the government dismissed the second charge leaving the remaining charge of "Exceeding the Daily Bag Limit on Doves". The matter was docketed as Case No. 0434, Magistrate's Docket 2-73.

The trial continued interruptedly on that date, and April 10, 1973. On April 17, 1973 Magistrate Klein found Petitioner guilty imposing a sentence of thirty (30) days confinement. The confinement was suspended with active probation for a term of eighteen (18) months together with a fine of Three Hundred and Fifty Dollars (\$350.00). One condition of probation was that Mr. Chew could not hunt migratory game birds during probation.

An appeal was filed on April 23, 1973 and docketed as Criminal Docket No. 73-0253-M in the District Court for Maryland. The appeal was heard on October 18, 1974 and by Order the same date the Magistrate's Decision was affirmed.

An appeal was filed on October 25, 1974 to the United States Court of Appeals for the Fourth Circuit and docketed as Number 74-2349.

By opinion on September 13, 1976, the Court of Appeals affirmed the Magistrate's findings also. A Petition for Rehearing was denied.

The Judgment of the United States Magistrate is set out in Appendix "A" herein.

The Judgment of the United States District Court for the District of Maryland is set forth in Appendix "B" herein and is not reported.

The Judgment of the United States Court of Appeals for the Fourth Circuit is not reported as yet and is set forth as Appendix "C" herein.

### JURISDICTION

The Judgment of the United States Magistrate was entered on April 17, 1973. The unpublished Order affirming the Magistrate was entered for the District of Maryland.

The unpublished Opinion of the United States Court of Appeals for the Fourth Circuit was entered on September 13, 1976 affirming the United States Magistrate; Petition for Rehearing was denied on October 5, 1976 and the Judgment was thus final; *Chicago G.P.R. Company v. Basham*, 249 U.S. 164; *Chicago Rock Island & Pacific Co. v. Brown*, 229 U.S. 317. The jurisdiction of this Court is invoked under Title 28, U.S.C., §1254.

## QUESTION PRESENTED

1. Whether the Statute and Regulations proscribing the offense herein are constitutionally vague?

2. Did the Court of Appeals err in affirming the Magistrate's Judgment on the basis of "Kill" with which Petitioner was not charged under Title 16, U.S.C. § 703 rather than "Take" exceeding the "bag limit" of which he was actually charged contrary to the Fifth Amendment?

3. Did the Courts below err in placing their interpretations on the regulation to support their conviction contrary to the intent of the Regulations as supported by the Fish and Wildlife Service as to what must be included in ones daily bag limit?

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The pertinent provisions of the Fifth Amendment as well as Title 16 U.S.C., § 703, and 50 CFR, § 10.24, § 10.25 and 10.11 are set forth in Appendix "D" hereto.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the Fifth Amendment as well as Title 16 U.S.C., § 703, and 50 CFR, § 10.24 and 10.11 are set forth in Appendix "D" hereto.

## STATEMENT OF THE CASE

The Appellant, William F. Chew, III, hereinafter referred to as Defendant was issued a Violation Notice Number 20128 on October 13, 1972 wherein he was charged with violating 16 U.S.C. Sections 703-711, 50 CFR Section 10.24— exceeding the bag limit on doves and 16 U.S.C. Sections 703-711, 50 CFR

## Section 10.25 *Wanton Waste to Migratory Game Birds* on September 9, 1972 at Baltimore, Maryland.

The case was tried on March 6, 1973 before the Honorable Daniel E. Klein, United States Magistrate for the District of Maryland. The Government voluntarily dismissed the charge of wanton waste. Additional testimony was heard on April 10, 1973 and on April 17, 1973 the Magistrate entered a finding of guilty as to the offense of exceeding the daily bag limit on doves. The Defendant was sentenced to a prison term of thirty (30) days which was suspended, and an eighteen (18) month Probation was established contingent upon the payment of a fine of Three Hundred and Fifty (\$350.00) Dollars and no hunting of migratory birds during the period of probation.

A Notice of Appeal, dated April 23, 1973, was filed by the Defendant and on October 18, 1974 the case was heard before the Honorable James R. Miller, Jr. in the United States District Court for the District of Maryland. On the same date the Judgment of the United States Magistrate was affirmed by the District Court.

The judgment was affirmed by the Fourth Circuit Court of Appeals on September 13, 1976 in a timely appeal on other grounds.

## HOW FEDERAL QUESTIONS ARE PRESENTED

The claim was presented to the United States Magistrate that the statute did not encompass actions of attempting to kill a game bird so as to place that bird in the "daily bag limit". It was argued that to do so made the statutory and rule provisions void for vagueness and failed to give adequate notice of what was proscribed.

In the United States District Court and the United States Court of Appeals the Petitioner presented the same question under the Fifth Amendment.

## REASONS FOR GRANTING THE WRIT

### I.

#### WHETHER THE STATUTE AND REGULATIONS PROSCRIBING THE OFFENSE HEREIN ARE CONSTITUTIONALLY VAGUE?

The opening day of dove season in the State of Maryland was September 9, 1972 and Lawrence M. Thurman, Jr., Leo Badger, and William Richardson, Special Agents of the United States Bureau of Sport Fisheries placed a farm in Baltimore, County, Maryland under surveillance. (T. 20). The said Agents noticed the Defendant and three (3) other hunters. (T. 26). The Agents counted twenty-two (22) birds shot by the Defendant. (T. 32, 33). The daily "bag limit" for doves was twelve (12). The Defendant stated he shot eleven (11) doves which he retrieved, but that he also shot eleven (11) additional doves, which he could not find. (T. 240) although he attempted to do so just as the agents did.

The Magistrate determined that the statutory definition of the word "take" included "killing or attempting to kill" and was not limited to "in possession". (Hereafter referring to Transcript of April 17, 1973—App. 11, 12). The Defendant was found guilty and sentence was rendered.

A Penal Statute must not be so vague that "persons of ordinarily intelligence must necessarily guess at its meaning and differ as to the application . . ." and thereby violate the constitutional requirement of due process. *Glickfield v. State*, 203 Md. 400, 404 (1953). The statutory language must also convey a "sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." *Levin v. State*, 1 Md. App. 139, 228 A.2d 487, 490

(1967). At the time of the offense the definition of the word "take" in relation to the hunting of migratory birds as set forth in 50 *Code of Federal Regulations* 10.11 (d) was "pursue, hunt, shoot, capture, collect, kill or attempt to hunt, shoot, capture, collect, or kill." Such a definition is unworkable and fails of any criteria. The ordinary meaning and the common understanding of the definition of the word "take" is the "physical seizure of something tangible" or "to lay hold of" as set out in *Words and Phrases* under the word "take" and the specific cases are, *Peoples v. Sanchez*, 95 P.2d 462 (1939) and *City of Durham v. Wright*, 130 S.E. 161 (1925).

The portion of the said definition, "kill, or attempt to hunt", would amount to any preparatory action which could include the aiming of a firearm at a flock of birds exceeding the "bag limit". Such a restriction would prohibit any attempts to hunt lawfully. The result is the lack of any reasonable guidelines and even further, *reductio ad absurdum*, such a statutory definition would permit the opposite of what one might consider an ordinary meaning. This was found by the Court of Appeals.

Further, the *Migratory Bird Treaty Act*, 16 U.S.C. 703 et seq., authorizes the Secretary of the Interior to adopt regulations and such regulations are annually adopted. The hunting regulations number 90 of the years 1973-74 omits the definition of the word "take" and such omission is a part of the new regulations affecting the whole subject which amounts to a substitution and thereby repeals any earlier provisions. Therefore, the common and ordinary understanding of the word "take" has been clarified.

The vagueness of the statutory definition is more greatly brought to light when comparing it to Regulation 10.25, *Wanton Waste to Migratory Game Birds*. The Regulation states, "No person shall kill or cripple any migratory game bird pursuant to this part without making any reasonable effort

to retrieve the bird and included in his daily bag limit." This regulation clearly prohibits the middle area between the physical taking of a migratory bird and the possible taking. There is an area where the hunter may believe he shot a bird but in an effort to prevent indiscriminate killing there is a requirement that a reasonable effort must be made to determine whether or not the bird in fact was killed or crippled. Therefore this section amply covers the circumstances not covered by the actual killing and retrieving of birds.

It is also the custom that the count of birds for the "bag limit" is based upon the number of birds killed *and retrieved*. This is further demonstrated by the Point System for duck hunting where so many points are allocated for different types of ducks and the maximum limit is calculated upon those birds actually retrieved.

It is therefore clear, and as supported by the evidence, that the Defendant shot and actually retrieved eleven (11) doves which is within the required daily "bag limit". And the shooting of the eleven (11) additional doves, which could not be found, would not violate the statute and regulations as to the "taking" of doves when considering the ordinary and common understanding of the word "take" and in conformity with the custom of hunters in the State.

Both the Petitioner and the game officer made efforts to retrieve the other birds but could not find any. Yet the Court of Appeals recognizing the vagueness of the law affirmed on the basis the Petitioner had shot the other birds.

A decision in this Court is vital to the permissible action by millions of hunters in the United States opened to prosecution by this interpretation by the Magistrate.

The interpretation in the decisions below is not even adhered to by the Director of the United States Fish and Wildlife Service, see the response number three September 2, 1975, Federal Register Vol. 40, No. 173 page 41097 where the request made by Wildlife Preserves, Inc. to include birds shot and crippled but not retrieved to be included in the daily bag limit was rejected by the Director at page 41098 citing the wanton waste provisions as adequately covering the subject.

Petitioner was charged with exceeding the bag limit but he was found guilty of killing more doves than were permissible in a bag limit even though he was unable to bag as many as were permissible in his bag limit. This Court has held in a line of cases that it is as much of a denial of due process to convict their Petitioner of a crime that is not within a statute as it is to convict this Petitioner of a crime with which he is not charged. *Rabe v. Washington*, 405 U.S. 313, and *Cole v. Arkansas*, 333 U.S. 196.

#### CONCLUSION

For reasons stated, it is respectfully requested that the Judgment rendered against the Defendant be reversed.

Respectfully submitted,

SAMUEL F. KENNEY  
31 Allegheny Avenue  
Towson, Maryland 21204  
(301) 823-5500

*Counsel for Petitioner*

**APPENDIX A**

**UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MARYLAND**

**Magistrate's Docket No. 2-73  
Case No. 0434**

**United States of America**

**JUDGMENT  
AND  
COMMITMENT**

**WILLIAM F. CHEW, III  
10011 Reisterstown Road  
Owings Mills, Maryland 21117**

**NO. 73-0252**

On this 17th day of April, 1973 came the attorney for the government and the defendant appeared in person and with counsel, Samuel F. Kenney, Esquire, 31 Allegheny Avenue, Towson, Maryland 21204 and advised of charges pending against him and of rights to silence and trial in District Court. Defendant filed written consent to be tried by Magistrate.

It is adjudged that the defendant has been convicted upon his plea of Not Guilty and a finding of guilty of the offense of exceeding daily bag limit on doves in violation of Title 16, Section 703 711, 50 C.F.R. 10.24 as charged in violation notice No. 20128 and the magistrate having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Thirty (30) Days.

IT IS ADJUDGED that imposition of sentence be suspended and defendant placed on Active Probation for a period of Eighteen (18) Months on the following terms and conditions: (1) payment of fine in the amount of Three Hundred Fifty Dollars (\$350.00); (2) defendant not hunt *any* migratory game birds during the period of probation.  
*FINE PAID*

IT IS ORDERED that a certified copy of this judgment and commitment and order of probation be delivered to the United States Marshall or other qualified officer and that the copy serve as the commitment of the defendant.

DANIEL E. KLEIN, JR.,  
*United States Magistrate.*

**APPENDIX B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

**UNITED STATES OF AMERICA, :**

*Appellee*

v. : CRIMINAL NO.  
73-0253-M

**WILLIAM FRANKLIN CHEW, III, :**

*Appellant*

**MEMORANDUM AND ORDER**

On October 18, 1974, William Franklin Chew, III's conviction by a United States Magistrate of a violation of the Migratory Bird Act was affirmed by this court sitting in its appellate capacity. 18 U.S.C. § 3401. On October 25, 1974, appellant noted an appeal to the United States Court of Appeals for the Fourth Circuit. On the same date, appellant also filed a motion entitled "MOTIONS FOR NEW TRIAL ON APPEAL" in this court, stating the reason to be, *inter alia*, that he wished to present ". . . additional evidence which has been enduced subsequent to the aforesaid hearing as to the implementation of the guidelines of the Department of the Interior." There is no indication that such material was not readily available prior to the time of the hearing in this court as well as prior to the time of the hearing before the magistrate. Furthermore, there is no indication as to what the purported additional evidence encompasses.

The noting of an appeal by the appellant to the Fourth Circuit divests this court of jurisdiction. Rule 33, F.R.Crim.P., provides:

"The court on motion of a defendant may grant a new trial to him if required in the interest of justice. . . . A motion for a new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgement, but if an appeal is pending the court may grant the motion only on remand of the case. . . ." (Emphasis supplied).

In the case of a new trial based upon newly discovered evidence, Rule 33 has been interpreted to provide that these motions may be denied by a district court while an appeal is pending, but may not be granted unless the case has been remanded from the Court of Appeals to the District Court.<sup>1</sup> *Rakes v. United States*, 163 F.2d 771 (4th Cir. 1947); *United States v. Frame*, 454 F.2d 1136 (9th Cir. 1972), cert. denied, 406 U.S. 925 (1973).

This court is without jurisdiction to grant the motion of the appellant, whether it is construed as a motion under Rule 33, F.R.Crim.P. or the equivalent of a motion under Rule 40, F.R.App. P.

Even if the appellant had not appealed the judgment of this court to the United States Court of Appeals for the Fourth Circuit, this court is without power to hear evidence when it is sitting in an appellate capacity in review of a decision of a

<sup>1</sup> Appellant's motion, although designated motion for new trial on appeal probably should be treated as one for a rehearing before this court sitting in its appellate capacity. Cf. Rule 40, F.R.App.P.

United States Magistrate. 18 U.S.C. § 3402; Rule 8 (d), The Rules of Procedure for the Trial of Minor Offenses before United States Magistrates; *United States v. Gills*, 357 F.2d 299 (4th Cir. 1966), cert. denied, 384 U.S. 933 (1966).

For all these reasons the motion of appellant "for new trial on appeal" is denied.

It is so ORDERED this 5th day of November, 1974.

/s/ James R. Miller, Jr.  
United States District Judge

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	:	CRIMINAL DOCKET
v.	:	NUMBER
	:	73-0253-M
WILLIAM FRANKLIN CHEW, III	:	
: : : : : : : : : : : : : : : : : :		

ORDER

The above entitled case came before the court for hearing on appeal from the judgment of the United States Magistrate and

after hearing argument of counsel for the respective parties and upon consideration of said argument and for the reasons stated in open court it is this 18th day of October, 1974 by the United States District Court for the District of Maryland,

ORDERED: That the judgment of the United States Magistrate be and is hereby affirmed and that said case is hereby dismissed.

/s/ James R. Miller, Jr.  
United States District Judge.

APPENDIX C

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

NO. 74-2349

UNITED STATES OF AMERICA,

*Appellee.*

versus

WILLIAM FRANKLIN CHEW, III,

*Appellant.*

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Appeal from the United States District Court for the District of Maryland, at Baltimore. James R. Miller, Jr., District Judge.

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(Argued July 14, 1976)

Decided Sept. 13, 1976)

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Before CRAVEN, RUSSELL, and WIDENER, Circuit Judges.

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William N. White and Samuel F. Kenney (Charles E. Brooks, Brooks and Turnbull on brief) for Appellant; John W. Sheldon, Assistant United States Attorney (George Beall, United States Attorney on brief) for Appellee.

CRAVEN, Circuit Judge:

On opening day of the Maryland dove hunting season, agents of the United States Bureau of Sports Fisheries issued a violation notice to the defendant. Chew was charged with exceeding the daily bag limit of 12 doves, and was tried and convicted by a United States magistrate. We affirm.

I.

Federal agents watched the Bragel Farm near Baltimore, Maryland, on September 9, 1972. They saw Chew and three companions hunting mourning doves, a federally-protected species of migratory birds. Two agents later testified that they saw Chew *kill and retrieve* 19 doves. The third agent said that Chew *killed and retrieved* 22 birds. Since the daily bag limit for mourning doves was 12, Chew was cited by the agents for violation of federal hunting laws.<sup>1</sup>

Chew consented to be tried before a United States magistrate pursuant to 18 U.S.C. §§ 3401, -02. The magistrate found that Chew had killed and retrieved 11 birds, and that he had also shot and killed ten other doves which he could

<sup>1</sup> Chew was originally charged with exceeding the daily bag limit on doves in violation of 16 U.S.C. § 703-11, 50 C.F.R. § 10.24 and wanton waste to migratory game birds, 50 C.F.R. § 10.25. The government voluntarily dismissed the wanton waste charge.

not find and did not find and did not retrieve.<sup>2</sup> On April 17, 1973, the magistrate found Chew guilty of exceeding the daily bag limit, sentenced him to a prison term of 30 days, suspended, and imposed an 18-month probationary term conditioned upon payment of a \$350.00 fine and requiring that Chew refrain from hunting migratory game birds during the probationary period. Chew appealed to the district court and thence to this court.

II.

The only issue briefed is the constitutionality of the regulation under which Chew's conviction was obtained. Chew contends that the regulation is unconstitutionally vague.

The Migratory Bird Treaty Act, 16 U.S.C. § 703 *et seq.* provides in part:

Unless and except as permitted by regulations made as hereinafter provided in sections 703-711 of this title, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill . . . any migratory bird. . . .

Applicable regulations in effect on the date of the offense provided that "no person shall *take* in any one day, more than the daily bag limit. . ." 50 C.F.R. § 10.103(a). "Take"

<sup>2</sup> On appeal, Chew's attorneys candidly admit that he in fact killed 21 birds, but are adamant that only 11 were retrieved. We accept, as we must, the magistrate's findings of fact favorable to the defendant.

is defined by regulation to mean:

(d) *Take.* Pursue, hunt, shoot, capture, collect, kill or attempt to hunt, shoot, capture, collect, or kill.

50 C.F.R. § 10.11 (d).

We agree with Chew that this definition is vague, ambiguous and overbroad as applied to a "bag limit." Read literally the regulation could be said to put in one's "bag" a flock of 13 doves flying overhead if one pointed his gun at them. It is urged that a regulation susceptible to such an absurd interpretation fails to give notice of that forbidden and is thus an affront to due process.

But Chew was not cited for merely pointing his gun at birds. He *killed*, by his own admission, at least 21. The regulation clearly equates "kill" with "take," and it is thus an offense to *kill* more than the daily bag limit. As applied to killing birds the regulation is precise and unambiguous. In cases where a statute or regulation is vague in its application to the conceivable range of human conduct but clear in its prohibition may not complain of its overall vagueness and generality. *Young v. American Mini Theaters, Inc.* 44 U.S.L.W. 4999, 5001-02 (U.S. June 24, 1976); *Parker v. Levy*, 417 U.S. 733, 752-61 (1973); *Broakrick v. Oklahoma*, 413 U.S. 601, 610-11 (1972); *United States v. Raines*, 362 U.S. 17, 21 (1960).

As applied to Chew's conduct, the definition of "take" is sufficiently precise. Chew killed more than the daily bag limit of mourning doves. This is forbidden, and the conviction is accordingly affirmed.

III.

At oral argument in this court Chew's attorneys contended that it is the universal custom among hunters to regard only birds *killed and retrieved* as included within the daily bag limit and that the regulation should be read in the light of custom. Since he retrieved only 11, he insists that according to the common understanding among hunters he actually "took" *one less* than the bag limit. Chew also claims that his method of computing daily bag limit has traditionally been employed by the Bureau in issuing violation notices. He suggests that evidence developed since his trial indicates that the strict language of the regulations is not generally enforced, and that hunters are not prosecuted unless found *in possession* of more than the daily bag limit.<sup>3</sup> Chew urges that, the constitutionality of the regulation aside, he is the victim of arbitrary enforcement.

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<sup>3</sup> Chew recognizes that a holding that "taking" requires actual possession of the birds might induce some hunters to kill as many birds as possible while making no attempt to retrieve them at all. He suggests that hunters who engage in such a practice would be liable for wanton waste to migratory game birds under federal regulations which provide that "[n]o person shall kill or cripple any migratory game bird pursuant to this part without making any reasonable effort to retrieve the bird and include it in his daily bag limit." 50 C.F.R. § 10.25. While a hunter who, like Chew, killed more than his daily bag limit but retrieved fewer might be found guilty of wanton waste, Chew contends that he is *not* guilty of exceeding the daily bag limit. *But see* footnote 2, *supra*.

Chew first raised this point by a "Motion for New Trial on Appeal" filed in the district court. In this motion, filed after the district court had affirmed his conviction, Chew asserted that "the Appellant wishes to offer additional evidence which has been enduced subsequent to the aforesaid hearing as to the implementation of the guidelines of the Department of the Interior." The district court denied the motion in a Memorandum and Order dated November 5, 1974, on grounds that (1) there was no indication that the proffered evidence was either "newly discovered" or probative, (2) there was no jurisdiction in the district court to grant the motion pending appeal,<sup>4</sup> and (3) there was no jurisdiction to receive evidence or conduct a trial *de novo* in the district court sitting as an appellate court from a magistrate's decision. We have not jurisdiction to consider the question for Chew did not appeal from the denial of his motion for a new trial.

*AFFIRMED.*

**APPENDIX D**  
**MIGRATORY BIRD TREATY ACT**

**Title 16, U.S.C. §703**

**703. Taking, killing, or possessing migratory birds unlawful.**—Unless and except as permitted by regulations made as hereinafter provided, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, export, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, or any part, nest, or egg of any such birds, included in the terms of the conventions between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916, and the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936. (July 3, 1918, c. 128, § 2, 40 Stat. 755; June 20, 1936, c. 634, § 3, 49 Stat. 1556.)

**50 C.F.R., §10.24**

No person shall take in any one day, more than the daily bag limit or aggregate daily bag limit, whichever applies.

**50 C.F.R., §10.11 (d) and (j)**

(d) *Take.* Pursue, hunt, shoot, capture, collect, kill or attempt to hunt, shoot, capture, collect, or kill.

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<sup>4</sup> Chew filed this motion on the same date he filed notice of appeal to this court. The district court felt that the pending appeal undermined its jurisdiction to consider the motion.

**A. 14**

(j) *Daily bag limit.* The maximum number permitted to be taken by one person in any one day during the open season in any one specified geographic area for which a daily bag limit is prescribed.

**50 C.F.R. § 10.25 Wanton waste of migratory game birds.**

No person shall kill or cripple any migratory game bird pursuant to this part without making a reasonable effort to retrieve the bird and include it in his daily bag limit.

**[AMENDMENT V]**

*/ Rights of Accused in Criminal Proceedings/*

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.